

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WILBERTO MELENDEZ,
Plaintiff,

v.

DETECTIVE ROBERT WHITEFORD,
***et al.*,**
Defendants.

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Case No. 5:21-cv-0683-JDW

ORDER

AND NOW, this 7th day of May, 2021, upon consideration of Plaintiff Wilberto Melendez's Motion to Proceed *In Forma Pauperis* (ECF No. 11), his Prisoner Trust Fund Account Statement (ECF No. 10), and his *pro se* Complaint and Exhibit (ECF No. 2 and 2-1), it is **ORDERED** as follows:

1. The Motion to Proceed *In Forma Pauperis* (ECF No. 11) is **GRANTED** pursuant to 28 U.S.C. § 1915;
2. Wilberto Melendez, #94-1275, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Warden of Lancaster County Prison or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Mr. Melendez's inmate account; or (b) the average monthly balance in Mr. Melendez's inmate account for the six-month period immediately preceding the filing of this case. The Warden or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Mr. Melendez's inmate trust fund account exceeds \$10.00, the Warden or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income

credited to Mr. Melendez's inmate account until the fees are paid. Each payment shall refer to the docket number for this case;

3. The Clerk of Court is directed to send a copy of this Order to the Warden of Lancaster County Prison;

4. The Complaint is deemed filed;

5. The Complaint is **DISMISSED WITHOUT PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for the reasons stated in the Court's Memorandum, as follows:

a. Mr. Melendez's claims against the County of Lancaster are **DISMISSED WITHOUT PREJUDICE** to amendment in accordance with paragraph six of this Order; and

b. Mr. Melendez's remaining claims are **DISMISSED WITH PREJUDICE**;

6. Mr. Melendez may file an amended complaint on or before June 11, 2021. Any amended complaint must identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the amended complaint and shall state the basis for Mr. Melendez's claims against each defendant. The amended complaint shall be a complete document that does not rely on the initial Complaint or other papers filed in this case to state a claim. When drafting his amended complaint, Mr. Melendez should be mindful of the Court's reasons for dismissing the claims in his initial Complaint as explained in the Court's Memorandum. Upon the filing of an amended complaint, the Clerk shall not make service until so ordered by the Court;

7. The Clerk of Court is **DIRECTED** to send Mr. Melendez a blank copy of the Court's form complaint for a prisoner filing a civil rights action bearing the above civil action number. Mr. Melendez may use this form to file his amended complaint if he chooses to do so;

8. If Mr. Melendez does not wish to amend his Complaint and instead intends to stand on his Complaint as originally pled, he may file a notice with the Court within thirty (30) days of the date of this Order stating that intent, at which time the Court will issue a final order dismissing the case. Any such notice should be titled “Notice to Stand on Complaint,” and shall include the civil action number for this case;

9. If Mr. Melendez fails to file any response to this Order, the Court will conclude that Mr. Melendez intends to stand on his Complaint and will issue a final order dismissing this case; and

10. Mr. Melendez’s Motion to Appoint Counsel (ECF No. 12) is **DENIED WITHOUT PREJUDICE** as premature.

BY THE COURT:

/s/ Joshua D. Wolson

JOSHUA D. WOLSON, J.